Marina Sports Ltd v Alliance Richfield Pte Ltd

HIGH COURT (SINGAPORE) — DC 3864/89
YONG PUNG HOW J
12 APRIL 1990

Banking — Postdated cheque — Cheque payable to cash or bearer — Cheque dishonoured — Liability of drawer — Cheque drawn conditionally — Total failure of consideration — Whether valid delivery of cheque — Fraud by drawee

Civil Procedure — Summary judgment — Cheque dishonoured — Whether triable issues raised — Rules of the Supreme Court 1970, O 14

The defendants drew a postdated cheque payable to cash or bearer and delivered the cheque to the plaintiffs. The plaintiffs negotiated the cheque to S, who presented the cheque for payment, but in the meantime, the defendants had countermanded payment. S returned the cheque to the plaintiffs and were repaid by them. The plaintiffs then issued a writ against the defendants in the district court and attempted to obtain summary judgment. The defendants were given conditional leave to defend and the plaintiffs appealed.

Held, dismissing the appeal:

(1) The affidavits of the plaintiffs provided only a bare outline of the transaction which allowed the defendants to raise many issues.

(2) In an application under O 14, it is not for the court to decide on the final merits of the issue, but only to provide an opportunity for the defendants to put up a defence if the court is satisfied that there is an issue which should be tried. As the defendants have raised triable issues, the appeal should be dismissed.

Cases referred to

1 *James Lamont & Co* v *Hylands* [1950] 1 KB 585 (refd)
2 *Jade International Steel* v *Robert Nicholas (Steels) Ltd* [1978] 3 All ER 104 (refd)
3 *Fielding & Platt Ltd* v *Najjar* [1969] 2 All ER 150 (refd)

Legislation referred to

Bills of Exchange Act (Cap 23, 1985 Ed) ss 29(1), 55

Mr Loo Dip Seng for the plaintiffs/appellants.
Mr Mansur Husain for the defendants/respondents.

Cur Adv Vult

Yong Pung How J: In this case, the defendants Alliance Richfield Pte Ltd drew a cheque postdated to 24 March 1989 upon the Bank of Singapore Ltd for $15,000 payable to cash or bearer and delivered the cheque to the plaintiffs Marina Sports Ltd, which is a Thai legal entity with its registered address at Phuket in Thailand. The plaintiffs negotiated the postdated cheque to Silomini who presented the cheque for payment on 25 March 1989, when it was dishonoured, payment having been countermanded by the defendants. Silomini returned the cheque to the plaintiffs and were repaid by the plaintiffs.

On 17 July 1989, the plaintiffs issued a writ against the defendants in the district court, and on 26 July 1989 took out a summons for final judgment under O 14 of the Subordinate Courts Rules 1986. On 29 August 1989, before the hearing of the summons, the defendants filed an affidavit setting out the background of the transaction. This stated that the defendants were intermediaries who acted on the plaintiffs' behalf in the sale of the plaintiffs' vessel the 'Falcon' to a third party, Manta Sports Ltd ('Manta'). The vessel was damaged while it was being delivered, whereupon Manta informed the defendants that they would not pay US$15,000 of the balance of the purchase price. This information was duly passed on by the defendants to the plaintiffs, and the plaintiffs then asked the defendants to persuade Manta to pay a reduced sum of US$7,500 which the defendants agreed to do.

Before knowing the outcome of the defendants' efforts, the plaintiffs persuaded the defendants to make what can only be described as an advance payment of US$7,500. One of the plaintiffs' directors, Somchai Sillapanont, asked the defendants to issue a postdated cheque for this sum in favour of the plaintiffs. His reason for this request was that it was difficult for him to contact the defendants in Singapore; therefore a postdated cheque in the plaintiffs' favour, to be banked in when the defendants received payment from Manta would ease the problem of the defendants, although the defendants had tried to assist them in collecting the remaining money from Manta. This telex to Somchai dated 31 March 1989, which was not contradicted by any affidavit filed by the plaintiffs, stated:

> We regret to inform you that we will not entertain any further communication from you in regard to the above vessel.
>
> In good faith we attempted to assist in the collection of certain amounts which you advised us were still owing to you from the purchasers of the vessel. We even issued a postdated cheque to you with specific instructions not to deposit said cheque until further advice from us on the postdated due date. However, contrary to our specific instructions you deposited the cheque prematurely and attempted to encash it despite the fact you were aware that said cheque was postdated.
>
> Because of your action we suffered undue embarrassment with our bankers and were assessed a charge for the returned cheque (since it was postdated and you deposited it almost one month prior to its postdated due date the bank naturally did not honour it).
>
> We are extremely disappointed by your action and bad faith. You violated the trust that we placed in you and as such we must decline any further involvement in this matter.
>
> We suggest that you refer directly to the purchasers of the vessel whose registered address is as follows:
>
> Manta Sports Asia S De RL
> 201 Fiallos Soto
> Tugucigalpa
> Republic of Honduras
>
> We reiterate that we shall not entertain any further communication from either you or your agents in regard to the above

vessel. We are not the purchasers of the vessel nor do we have any contractual or other obligations with you or your company. We now realize that it was a mistake on our part to attempt to assist you specially in view of what you attempted by depositing the postdated cheque prematurely and abusing our trust.

On the hearing before the registrar of the summons for final judgment, the defendants raised several issues. They contended that the plaintiffs could not be deemed to be holders in due course as the cheque had already been dishonoured on 27 February 1989 and had become irregular. The dishonoured cheque was no longer a bill of exchange as its character had changed after the dishonour. There had been total failure of consideration as the defendants had received nothing. The plaintiffs had breached the agreement between them when presenting the cheque for payment before the defendants had confirmed to the plaintiffs that they had received payment from Manta and that they could then bank in the cheque. The plaintiffs contended that the cheque to cash or bearer should be treated as cash, and that the plaintiffs were still holders in due course. There was no evidence before the court that there was any fraud or misrepresentation which would entitle the defendants to dishonour the cheque. The defendants were granted leave to defend, conditional on a bankers guarantee for $10,000 (out of the $15,000 claimed) being furnished by the defendants within one month, in default of which the plaintiffs could obtain judgment for the sum claimed, interest of 6% pa from 25 March 1989 to the date of judgment and costs. The plaintiffs appealed to the judge-in-chambers against the registrar's refusal to grant final judgment.

The issue raised by the appeal is simply whether, in the context of O 14, the court is satisfied that the defendants have no defence to the claim, or that there is an issue or question in dispute which ought to be tried. The basic principles are clear. Section 55 of the Bills of Exchange Act (Cap 23, 1985 Ed) stipulates in effect that the drawer of a cheque, by drawing it, engages that upon due presentment it will be paid, and if it is dishonoured, he will compensate the holder. Thus, if these were the bare facts and there was nothing more, the plaintiffs would be entitled to have summary judgment entered against the defendants. Alternatively, if the details of the negotiation to Silomini were not challenged, Silomini would have been able to claim on the cheque against the defendants, as a holder in due course who took the cheque in good faith and for value, satisfying both the conditions set out in s 29(1) of the Act.

These principles are not absolute, however, as can be seen even from the case authorities which have been cited by the plaintiffs: *James Lamont & Co* v *Hylands*;[1] *Jade International Steel* v *Robert Nicholas (Steels) Ltd.*[2] In the instant case, the two affidavits which were filed on behalf of the plaintiffs provided only a bare outline of the entire transaction, which in my opinion allowed many issues to be raised when the defendants explained some of the background to the claim. Among these issues, the defendants pointed out that the cheque was drawn by the defendants under an express condition that it was not to be presented for payment until after the defendants had received payment from Manta, and after the defendants had confirmed to the plaintiffs that they could bank in the cheque. There was no evidence that Manta had made payment and that this condition had been fulfilled. In the circumstances, the defendants have contended that there could well be at least an arguable case based on a total failure of consideration, as suggested by Lord Denning MR in *Fielding & Platt Ltd* v *Najjar*[3] at p 152.

The defendants have argued that a consequence of this could then be that, since the cheque had been issued conditionally and the condition had not been fulfilled, there was no valid delivery of the cheque under s 21, and the arrangement agreed by the defendants at the request of Somchai was incomplete and could be revoked by the defendants. Another consequence arising from the plaintiffs' possible breach of faith in negotiating the cheque to Silomini before the required clearance had been received from the defendants could be an arguable case based on fraud, which could result from the plaintiffs negotiating the instrument in breach of faith. In such event, the possibility of fraud would exclude the summary procedure under O 14.

This being an application under O 14, it is not for the court to decide on the final merits of this issue, but only to provide an opportunity for the defendants to put up a defence if the court is satisfied that there is an issue which should be tried. There are clearly such issues, and accordingly the plaintiffs' appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Ang & Partners*; *Gabriel Peter & Partners.*

Reported by *Terence Tan Bian Chye*